IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

WP(C).No. 10412 of 2006(M)

PETITIONER:

USHA.K.S,
HIGH SCHOOL ASSISTANT (MALAYALAM),
RAMAVARMA UNION HIGH SCHOOL,
CHERAI.

BY ADV. SRI.DEEPU THANKAN

RESPONDENTS:
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1. **THE DISTRICT EDUCATIONAL OFFICER,**
   ERNAKULAM.

2. **MANAGER,**
   RAMAVARMA UNION HIGH SCHOOL,
   CHERAI.

3. **SMT.P.I.MARTHA (HSA),**
   RAMAVARMA UNION HIGH SCHOOL,
   CHERAI.

BY ADV. SRI.V.A.MUHAMMED - R3
SRI.K.E.HAMZA
GOVERNMENT PLEADER SMT. M.R.SREELATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON 21.02.2007 DELIVERED THE FOLLOWING:

W.P.(C) NO.10412/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER OF THE 1ST RESPONDENT DT.30.3.06.

EXT.P2:- COPY OF THE CERTIFICATE ISSUED TO THE 3RD RESPONDENT DT.

EXT.P3:- COPY OF THE ENGLISH TRANSLATION OF EXT.P2 CERTIFICATE.

EXT.P4:- COPY OF THE AMENDMENT DT.3.8.01.

EXT.P5:- COPY OF THE PROFILE OF THE RASHTIYA SANSKRIT SANSTHAN PUBLISHED IN THE INTERNET BY THE INSTITUTION.

EXT.P6:- COPY OF THE NOTIFICATION ISSUED BY THE GOVERNMENT OF INDIA DT.16.11.87.

RESPONDENTS EXHIBITS

EXT.R3(a):- COPY OF THE ORDER NO.GA/(D4)/899/72 OF THE UNIVERSITY OF CALICUT.

EXT.R3(b):- COPY OF THE G.O.(MS) NO.204/73/G.EDN. OF THE GOVERNMENT.

EXT.R3(c):- COPY OF THE DECISION REPORTED IN 2002 (1) K.L.T. S.N. PAGE 26 (CASE NO.30).

EXT.R3(d):- COPY OF THE JUDGMENT IN OP. NO.30018/1999 OF THIS HONOURABLE COURT.

EXT.R3(e):- COPY OF THE ORDER NO.B2-7159/06 OF THE DISTRICT EDL. OFFICER, ERNAKULAM.

/TRUE COPY/

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K. M. JOSEPH, J.

W.P.C. NO. 10412 OF 2006 M

Dated this the 21st February, 2007

JUDGMENT

Case of petitioner, in brief, is as follows:

Petitioner is a Post Graduate Degree holder in B.Ed. In Malayalam. She is working as a HSA in the second respondent's School. Petitioner challenges Ext.P1 order and seeks a direction to second respondent to promote her to the post of HM from 31.5.2006 when she became eligible to be promoted. It is her case that she is the third senior-most teacher as per the seniority list. The third respondent is the senior-most teacher. But, she does not possess B. Ed. Qualification or its equivalent qualification. Therefore, she was overlooked when the vacancy arose on 31.3.2001. One Smt. Susamma Varghese was appointed. This was challenged before this Court and this Court did not accept the claim of third respondent. It is anticipating that the same issue will arise on the retirement of Smt. Susamma Varghese, petitioner filed representation along

with the second senior-most teacher, who retired on 31.5.2006. It is pursuant to the direction of this Court that Ext.P1 order was passed by first respondent DEO, who directed promotion of third respondent. It is the case of petitioner that as per Rule 2 of Chapter XXXI of KER, qualification prescribed for the post of HM is a Degree in Arts & Science or its equivalent and B.Ed./B.T./L.T. or its equivalent conferred or recognized by the Universities in Kerala. Third respondent is a Post Graduate Degree holder in Sanskrit. She does not possess B.Ed. in any Subject, but the training qualification is Shiksha Sastri which is granted by the Rashtreeya Sanskrit Sanstan, New Delhi which is an autonomous body under the Ministry of Human Resources Development. It is the case of petitioner that the training qualification is not a Degree. It is stated that third respondent underwent training in the Rashtreeya Vidhyapeeda, Thirupathy, Andhra Pradesh in the year 1976-1977. The said Institution comes under the Rashtreeya Sanskrit Sansthan, New Delhi. Rule 2 underwent an amendment on 3.8.2001. After the

amendment, any Degree equivalent to B.Ed./B.T./L.T. Recognized by the Universities in Kerala is the qualification for the post of HM, it is contended. It is the case of petitioner that under Section 22 of the University Grants Commission Act, only a University or a deemed University as defined in Section 3 of the UGC Act shall have a right of conferring or granting Degrees. The Rashtreeya Sanskrit Sansthan came to be declared a deemed University by Notification dated 7.5.2002. The Rashtreeya Vidhyapeeda, Thirupathy became a deemed University only with effect from 16.11.1987 (Ext.P6). Therefore, it is contended that at the time of issuing Certificate to third respondent, namely in 1977 (Ext.P3), neither the Rashtriya Sanskrit Sansthan, New Delhi, nor the Rashtreeya Vidhyapeeda, Thirupathy were deemed Universities. Therefore, being neither University, nor a deemed University, the Certificate possessed by third respondent could not be treated as an equivalent qualification, even under the amendment to Rule 2. In this connection, petitioner relies on the Explanatory Note.

I extract the Explanatory Note hereunder:

> *"As per the existing provisions, persons having Shiksha Shastri degree awarded by Rashtriya Sanskrit Samsthan, a qualification recognised as equivalent to B.Ed. By the National Council for Teacher Education and Universities in Kerala, are not eligible for promotion to the post of Headmaster. Government have considered the case of High School Assistants possessing the above recognised qualifications and decided to treat such qualification as equivalent to the qualification prescribed under Rule 2(1) of Chapter XXXI Kerala Education Rules for promotion to the post of Headmaster in Aided High School and hence decided to amend the said rules accordingly.*
>
> *This Notification is intended to achieve the above object."*

2. Third respondent and the official respondents have filed Counter Affidavits. In the Counter Affidavit filed by third respondent, it is, inter alia, stated as follows:

The University of Calicut by Ext.R3(a) dated 28.11.1973

has recognised Shiksha Sastri as equal to B.Ed. in Sanskrit. Government vide Ext.R3(b) dated 17.12.1973 recognised Shiskha Sastri as equivalent to B.Ed. Degree. When the vacancy arose earlier on 1.4.2001 which is prior to the amendment in question, the third respondent staked a claim for the post. This Court in the Judgment in Susamma Varghese v. State of Kerala (2002 (1) KLT SN Page 26 Case No.30) held as follows:

> *"Under R.2 Chapter XXXI of the K.E.R. The qualification for appointment as a Headmaster is "a Degree in Arts or Science and B.Ed./BT/LT conferred or recognised by the Universities in Kerala." It was only as per G.O.(P) No.247/2001/G.Edn. Dated 3.8.2001 (Ext.P17 produced along with C.M.P.No.55852/2001 in O.P. No.27124/2001) that the Government has amended R.2(1) of Chapter XXXI enabling acceptance of Shiksha Shasthri awarded by Rashtriya Sanskrit Sansthan to be sufficient qualification for promotion to the post of*

Headmaster in Aided High Schools. Prior to the amendment it was only a degree of B.Ed/BT/LT awarded by competent University and recognized by one or the other Universities in Kerala that could be accepted as sufficient qualification, as substitute for a degree conferred by the Universities in Kerala. The impact of the amendment is that not only degrees of B.Ed/BT/LT but also its equivalent recognized by Universities in Kerala could be accepted as sufficient qualification. Such Government Order amending the Rule has only prospective effect and the 4th respondent cannot hence take shelter under the said Government Order for claiming right or promotion to the vacancy in question which arose earlier on 1.4.2001. If only the vacancy in question had arisen after 3.8.2001, the 4th respondent could have raised a tenable claim for the post. The date of occurrence of vacancy is prior to 3.8.2001 when alone amendment was effected to R.2(i) of Chapter XXXI of the K.E.R. Making equivalent qualification also admissible."

This is confirmed in Writ Appeal. There is reference to Ext.R3

(d) Judgment in support of the contention.

3. The question that falls for decision is whether Ext.P1 is justified. Admittedly, third respondent is senior to petitioner. The only question is whether third respondent is possessed of a qualification equivalent to the Degree in B.Ed./BT/LT. On the one hand, counsel for petitioner would contend that having regard to the words of the Rule, the equivalent qualification must be a Degree and as the third respondent is relying on Ext.P2 issued in 1977, when admittedly the Rashtreeya Sanskrit Sansthan as also the Rashtreeya Vidhyapeeda, Thirupathy were neither Universities nor deemed Universities, it could not be treated as an equivalent qualification. This is for the reason that under the University Grants Commission Act, only a University or a deemed University is authorised to award Degree.

4. Counsel for petitioner would also contend that though the third respondent was a party to the Judgment and it was declared by this Court that she would be qualified in respect of

any vacancy which arose after the date of the amendment, the specific issue which is raised by petitioner in this case, namely that only a University or a deemed University could award Degree was not considered by this Court.

5. In this context, it is necessary to refer to the Explanatory Note. The Explanatory Note declares that as per the provisions extant, the persons having Shiksha Sastri Degree awarded by the Rashtriya Sanskrit Sansthan, a qualification recognized as equivalent to B.Ed. Degree by the National Council of Teacher Education and a University in Kerala are not eligible for promotion to the post of HM. It is thereafter stated that the Government has considered the case of High School Assistants possessing the above qualifications and decided to treat such qualification as equivalent to the qualification in Rule 2(i) and decided to amend the Rules. The amendment was effected on 14.8.2001. Even the case of petitioner is that Rashtriya Sanskrit Sansthan became a deemed University only on 7.5.2002. Thus, as on the date of the amendment, the

position was that Rashtriya Sanskrit Sansthan was not either a University or a deemed University. I cannot attribute ignorance of this fact to the rule making authority. I must proceed on the other hand, on the presumption that the rule making authority knows the position as on facts. If I proceed thus, the result is inevitable that the rule making authority intended to confer the benefit of equivalency to the Shiksha Sastri Degree awarded by the Rashtriya Sanskrit Sansthan to the qualification prescribed in Rule 2(i). No doubt, petitioner would contend that as on the date of the amendment, the College in which the third respondent has studied, namely the Rashtreeya Vidhyapeeda, Thirupathy had become a deemed University on 16.11.1987. He would contend that the amendment is intended only to confer a right on those who have passed out from the Rashtreeya Vidhyapeeda, Thirupathy and who were conferred Degree after 16.11.1987.

6. I am of the view that there is little merit in the contention of petitioner. Admittedly, by Ext.R3(a), the Calicut

University has recognized the Shiksha Sastri as equivalent to B.Ed. in Sanskrit as early as on 28.11.1973. Ext.R3(b) dated 17.12.1973 would evidence that Government has declared Shiksha Sastri examination of the Rashtriya Sanskrit Sansthan as equivalent to B.Ed. Degree Examination for the purpose of Sanskrit Teachers in the Educational Institutions. Thus, as noted in the Explanatory Note, it was to bring about a change in the law as contained in the unamended sub-rule(i) of Rule 2 of Chapter XXXI KER and to make Shiksha Sastri Degree awarded by the Rashtriya Sanskrit Sansthan equivalent to the existing qualification that the amendment was effected, even though as on the date of the amendment, Rashtriya Sanskrit Sansthan was admittedly not even a deemed University. Shiksha Sastri Degree is in other words declared as equivalent to B.Ed./BT/LT. All that is necessary is that it should be recognized by the Universities in Kerala. It is not the mandate of the Rule as amended that Shiksha Sastri as recognized as equivalent should be one which is awarded by a Body which is a

University or a deemed University. It is to be noted that the Explanatory Note relied on by petitioner does not in fact refer to the Degree awarded by the Rashtreeya Vidhyapeeda, Thirupathy. That itself shows that what was intended was that even though the Rashtriya Sanskrit Sansthan was not a deemed University as on the date of the amendment, Shiksha Sastri Degree awarded by it was declared to be an equivalent qualification. In such circumstances, I find that there is no merit in the Writ Petition and it will stand dismissed.

K. M. JOSEPH, JUDGE

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